

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE LITIGATION

MDL No. 1456

THIS DOCUMENT RELATES TO:

ALL ACTIONS

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

**CLASS PLAINTIFFS' MEMORANDUM IN OPPOSITION TO
SCHERING-PLOUGH'S MOTION TO STRIKE CERTAIN SUBJECT DRUGS**

Schering claims that Intron A is a not part of the certified class because it claims it is not a Part B reimbursement.

The Court set a firm deadline for the filing of a summary judgment motion. Schering filed such a motion and indeed filed several pleadings.¹

Plaintiffs filed proposed motions for class certification identifying Intron A as a subject drug last September 3, 2004. Schering has filed no less than four briefs on the issue of class certification and never made its current argument that Intron A is not reimbursable under Medicare Part B.

Now it belatedly brings a motion to strike. Though not referred to by Schering, Rule 12(f) governs motions to strike. Schering has to file such a motion when plaintiffs'

¹ See Schering-Plough Corporation's and Warrick Pharmaceuticals Corporation's Motion for Summary Judgment as to Class 2 Claims; Concise Statement of Undisputed Material Facts in Support of Schering-Plough Corporation's and Warrick Pharmaceuticals Corporation's Motion for Summary Judgment; Schering Plough Corporation's and Warrick Pharmaceuticals Corporation's Memorandum in Support of Motion for Summary Judgment as to Class 2 Claims; Declaration of Eric P. Christofferson; and Declaration of Sumanth Addanki, Ph.D.

operative complaint was filed. The operative complaint for Track 1 was filed on October 17, 2005.

So Schering is too late in bringing this motion. And there is good reason Schering is too late. As for Intron A, plaintiffs' expert has identified Intron A NDC's that are Medicare reimbursed. Dr. Hartman has been deposed about his liability report.² The proposed class notice and complaint was filed before his deposition was taken and Schering did nothing in regard to this issue at his deposition.

Dr. Hartman has concluded Intron A is Medicare Part B reimbursable.

Thus, as for Intron A, the motion is both procedurally and substantially improper.

DATED: July 7, 2006.

By /s/ Steve W. Berman
Thomas M. Sobol (BBO#471770)
Edward Notargiacomo (BBO#567636)
Hagens Berman Sobol Shapiro LLP
One Main Street, 4th Floor
Cambridge, MA 02142
Telephone: (617) 482-3700
Facsimile: (617) 482-3003

LIAISON COUNSEL

Steve W. Berman
Sean R. Matt
Hagens Berman Sobol Shapiro LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594

² See Declaration of Raymond Hartman Opposing the Schering-Plough Corporation's Motion to Strike Certain Subject Drugs: Intron A, at ¶¶ 2-7 submitted herewith.

Elizabeth Fegan
Hagens Berman Sobol Shapiro LLP
60 W. Randolph Street, Suite 200
Chicago, IL 60601
Telephone: (312) 762-9235
Facsimile: (312) 762-9286

Eugene A. Spector
Jeffrey Kodroff
Spector, Roseman & Kodroff, P.C.
1818 Market Street, Suite 2500
Philadelphia, PA 19103
Telephone: (215) 496-0300
Facsimile: (215) 496-6611

Kenneth A. Wexler
Jennifer Fountain Connolly
The Wexler Firm LLP
One North LaSalle Street, Suite 2000
Chicago, IL 60602
Telephone: (312) 346-2222
Facsimile: (312) 346-0022

Marc H. Edelson
Allan Hoffman
Edelson & Associates LLC
45 West Court Street
Doylestown, PA 18901
Telephone: (215) 230-8043
Facsimile: (215) 230-8735

Shanin Specter
Donald E. Haviland, Jr.
Kline & Specter, P.C.
1525 Locust Street, 19th Floor
Philadelphia, PA 19102
Facsimile: (215) 772-1359
Telephone: (215) 772-1000

**CO-LEAD COUNSEL FOR
PLAINTIFFS**

CERTIFICATE OF SERVICE BY LEXISNEXIS FILE & SERVE

Docket No. MDL 1456

I, Steve W. Berman, hereby certify that I am one of plaintiffs' attorneys and that, on July 7, 2006, I caused copies of **CLASS PLAINTIFFS' MEMORANDUM IN OPPOSITION TO SCHERING-PLOUGH'S MOTION TO STRIKE CERTAIN SUBJECT DRUGS** to be served on all counsel of record by causing same to be posted electronically via Lexis-Nexis File & Serve.

/s/ Steve W. Berman

Steve W. Berman